



# Health Care Security Ordinance (HCSO)

Office of Labor Standards Enforcement (OLSE)

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# Today's Topics

1. Health Care Security Ordinance (HCSO) Overview
2. New HCSO Rules
3. Common Compliance Issues



# Office of Labor Standards Enforcement (OLSE)

- OLSE enforces San Francisco labor laws, including:
  - Minimum Wage
  - Paid Sick Leave
  - Health care Security Ordinance
  - Family Friendly Workplace Ordinance
  - Fair Chance Ordinance
  - Formula Retail Employee Rights Ordinance
  - New in 2017: Paid Parental Leave Ordinance
  - New in 2018: Lactation in the Workplace, Consideration of Salary History
  - Special labor laws for City contractors
- Investigative authority; enforcement power; technical assistance for employers



# HCSO History and Overview

- The HCSO was passed unanimously by the Board of Supervisors in July 2006 and implemented on January 1, 2008
- The HCSO requires covered employers to make health care expenditures (spend money) on behalf of covered employees for health care services
- The HCSO was amended in 2011 and 2014
- **New Rules in effect October 29, 2017.**



# Covered Employers

- Applies to any entity doing business in San Francisco
- Minimum size threshold based on total number of **persons performing work** in ALL locations throughout the world, not only San Francisco
  - For-profit employers: 20+ persons perform work per quarter
  - Nonprofit employers: 50+ persons perform work per quarter



# Employer Obligations under the HCSO

- 1) Post official OLSE notices in all workplaces
  - Download notice from the OLSE website
- 2) Report health care expenditures to OLSE annually
  - Annual Reporting Form (ARF)
- 3) Maintain employment records and records of compliance
  - Time sheets, employee info, records of health care expenditures made
- 4) **Satisfy Employer Spending Requirement (ESR) for covered employees**



# Employees Covered by the HCSO

- Employees employed for at least 90 calendar days at the company and work at least 8 hours per week (104 per quarter) in San Francisco
- **NOT COVERED** (Exempt from the HCSO)
  - Managers/Supervisors. Must satisfy (1) job duties test and (2) salary requirement of \$95,101/yr (2017), \$97,722/yr (2018)
  - Medicare or TRICARE
  - Employees covered by the Health Care Accountability Ordinance (HCAO)
  - Employees who are receiving health care services *through another employer* and who voluntarily sign an OLSE Employee Waiver Form



# OLSE Voluntary Waiver Form

- Valid only for employees receiving health care benefits from another employer
- Forms from third-parties are not valid; forms cannot be retroactive
- Waiver must be completed voluntarily
- Valid for one year from date signed
- Revocable by employee at any time
- Employers must keep documentation
- Available in English, Chinese, Spanish, & Tagalog
- Waiver form was updated November 1, 2017. Only use new version going forward.





# Employer Spending Requirement

- Health Care Expenditure Rates

Employer Size	2017	2018
100+ Employees	\$2.64/hr	\$2.83/hr
20-99 Employees	\$1.76/hr	\$1.89/hr

- What this looks like for a FULL TIME employee:

	2017	2018
Large Employer	\$454.08/mo \$1,362.24/Q	\$486.76/mo \$1,460.28/Q
Medium Employer	\$302.72/mo \$908.16/Q	\$325.08/mo \$975.24/Q

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# Employer Spending Requirement

- Payable Hours x Health Care Expenditure (HCE) Rate = Amount To Spend Quarterly
- Payable hours includes hours worked and any hours a person is entitled to be paid wages, like sick leave, vacation, PTO
- Payable hours cap: 172 hours/month
- HCEs must be made 30 days after the end of the preceding quarter. Quarterly Deadlines:

<b>Q1: Apr. 30</b>	<b>Q3: Oct. 30</b>
<b>Q2: July 30</b>	<b>Q4: Jan. 30.</b>

# Employer Spending Requirement

## Options to satisfy ESR:

- Provide health insurance:
  - medical, dental, and/or vision premiums
  - covered employees and/or their spouses, partners, children, or other dependents
- Contribute to SF City Option
- Contribute to a Health Savings Account, Medical Savings Account, or other irrevocable reimbursement account
- Combination of these options



# HCSO 2017 RULES

# 2017 Rulemaking Process

- Draft Rules posted August 8, 2017
- Draft sent to 9,102 employers by email
- Public comments accepted through September 7, 2017
- Public hearing on draft Rules held September 7, 2017
- Final Rules published October 10, 2017
- Effective date October 29, 2017
  
- Full text of rules available at <http://sfgov.org/olse/hcso>



# 2017 Rulemaking Updates: Waivers

- Rule 3.8: Waivers
  - New waiver form updated as of Nov. 1, 2017 → Only use the new form going forward.
  - Must be signed voluntarily
  - If employee fails to state that he/she has insurance from another employer, it is not valid
- Rule 3.9: Electronic Waivers
  - Permissible as long as the electronic form is identical to the OLSE form, and is voluntary



# 2017 Rulemaking Updates: PPLO-HCSO overlap

- Rule 4.4: Paid Parental Leave Ordinance (PPLO)
  - PPLO went into effect in 2017.
  - While an employee is receiving PPLO benefits, in order to comply with the HCSO the employer must make a health care expenditure proportionate to the amount of the employee's supplemental compensation.
- For general guidance about the PPLO, contact [pplo@sfgov.org](mailto:pplo@sfgov.org) or (415) 554-4190





# 2017 Rulemaking Updates: Uniform Health Plans (averaging)

- Employer must ensure it makes the correct spend for each individual employee *except* when it provides a “uniform health plan” under Rule 5.8.
- When a uniform health plan is provided, employer may average the expenditures for enrolled employees.
- See Rule 5.8 for calculation instructions. Employees must be on the same plan (i.e., Kaiser Bronze cannot be averaged with Kaiser Silver).
- Used for fully-funded age-banded plans.
- Used for self-insured plans.
- Make sure you maintain calculation records.



# 2017 Rulemaking Updates: Self-funded insurance plans

- Rule 5.9(a): When employers pay premiums to a third party to for their self-funded plans (“level-funded plans”):
  - The employer can count premiums and administrative fees paid to the third party **irrevocably**.
  - If the employer gets any refund from the third party, that does not count toward required expenditures.
  - **Questions about what type of fees are considered “health care expenditures” under the HCSO should be directed to OLSE.**



# 2017 Rulemaking Updates: Self-funded insurance plans

- Rule 5.9(b): When employers pay claims as incurred (pay-as-you-go):
  - The employer must demonstrate that the average hourly expenditures for a calendar year meet or exceed that year's expenditure rates.
  - Employers are no longer permitted to count the COBRA equivalent rate as the Health Care Expenditure amount.



# 2017 Rulemaking Updates: Self-funded Insurance Plans

- Rule 5.10: Self-insured employers with “pay-as-you-go” plans are allowed the full calendar year to meet the expenditure requirement.
- Employers have until the end of February of the following year to “top off.”
- (that employers level-funded self-funded plans with premium contributions must still ensure that they comply with *quarterly* spending requirements).



# 2017 Rulemaking Updates: Self-funded examples

- Example A: In 2018, the employer's actual expenditures for employees participating in its Gold Plan was an average of \$2.90/hr → because this exceeds the 2018 expenditure rate of \$2.83/hr, the employer is compliant for 2018.
- Example B: In 2018, the employer's actual expenditures for employees participating in its Bronze Plan was an average of \$2.50/hr → This does not satisfy the expenditure rate for 2018, so this employer will need to “top off” the Covered Employees in this plan.



# 2017 Rulemaking Updates: Self-funded insurance plans FAQs

Q: What are self-funded employers supposed to do about Q4 2017, when they've been relying on the COBRA equivalent rate to comply for 2017?

A: Even though the effective date of the new rules is 10/29/17, OLSE will not penalize employers for using COBRA equivalent rate for the entirety of 2017. OLSE will begin enforcing the new provision of Rule 5.9(b) for calendar year 2018.



# 2017 Rulemaking Updates: Self-funded insurance plans FAQs

Q: How should self-funded employers handle the fact that claims are often not incurred and paid on the same date?

A: For employers utilizing Rule 5.9(b) (annual expenditures), the HCSO Rules anticipate claims that are actually paid in the calendar year.



# 2017 Rulemaking Updates: Self-funded insurance plans FAQs

Q: When a self-funded employer pays a third party, but the third party gives the employer a refund at the end of the year because there's a surplus after claims have been paid, how should the employer handle that?

A: The employer may not count the refunded amount in their calculations.







# Common Compliance Issues

# HCSO Best Practices for Employers

- **Transparency and Communication with employees**
- **Well-trained staff in HR and benefits department**
- **Stay up to date:** HCSO email list, website, webinars. Hotline available for individual technical assistance.



# HCSO Compliance Quiz: Question 1

Employer: “I offer insurance to my employees, so I must be compliant, right?”

Employer: “I comply with the ACA, so I’m compliant with the HCSO.”



A: **INCORRECT**. Employer must ensure that it's *spending enough* on the insurance, and that it is making expenditures for employees who aren't participating in the insurance (due to ineligibility or opting out).

→ See Administrative Guidance Sections E6, E7, E9, E10



# HCSO Compliance Quiz: Question 2

Employer: “I spend more than I’m required to on some employees, so it’s OK that I spend less on others.”



A: Not necessarily. This would only be true if the employer offers uniform coverage and is correctly averaging its expenditures within each plan.

→ See Administrative Guidance Sections D8, D9, D11



# HCSO Compliance Quiz: Question 3

Employer: “The City requires that I have all my employees fill out a waiver form if they don’t want my insurance.”



**A: WRONG. WRONG. WRONG.** The HCSCO requires that the employer still make health care expenditures for Covered Employees who do not want to participate in the company's insurance plan. In *limited situations*, some of those employees may be eligible to sign a waiver, and then the employer can get out of the spending obligation. The default is: ***make expenditures*** for those people.

→ See Administrative Guidance Sections E8, E9, C9, C10, C11.





# HCSO Compliance Quiz: Question 4

Employer: “To comply with the HCSO, I just set aside the appropriate amount of money for each employee, and keep it in my bank account in case they come forward and tell me that they need it for medical expenses.”



**A: This practice was outlawed in 2014. The SF Board of Supervisors amended the HCSO in 2014 specifically to end this practice. As of January 2017, 100% of expenditures must be made irrevocably.**

→ See Administrative Guidance Section F (entire section)



# HCSO Compliance Quiz: Question 5

Employer: “We offer a self-funded plan, and to make sure it satisfies the HCSO expenditure requirements, we look at the COBRA rate.”



A: This is no longer permitted as of Jan. 1, 2018. Employer must ensure its self-funded plan satisfies the spending requirements either by ensuring quarterly premiums/fees to third party are sufficient, or by ensuring the preceding year's average hourly expenditures meet the current year's rate.

→ See Rule 5.9(a) (premiums to third party) or 5.9(b) (pay claims as incurred)



# HCSO Resources

- [Sign up](#) for OLSE updates
- OLSE/HCSO [Website](#)
  - Administrative Guidance
  - OLSE Official Notices
  - Annual Reporting Form
  - Employee Voluntary Waiver Form
- Email us: [HCSO@sfgov.org](mailto:HCSO@sfgov.org)
- Call us: (415) 554-7892